

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

CARLOS MARTINEZ,

Petitioner,

v.

SECRETARY OF CALIFORNIA
DEPARTMENT OF CORRECTIONS
AND REHABILITATION,

Respondent.

No. 1:22-cv-00805-JLT-SAB-HC

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DISMISSING
PETITION FOR WRIT OF HABEAS
CORPUS WITHOUT PREJUDICE, AND
DIRECTING CLERK OF COURT TO SEND
PETITIONER PRISONER CIVIL RIGHTS
COMPLAINT

(Doc. 7)

The magistrate judge issued Findings and Recommendations, recommending the petition for writ of habeas corpus be dismissed because Petitioner's claim is not cognizable in federal habeas corpus and declining to convert the petition as a civil rights complaint. (Doc. 7.) Petitioner filed timely objections. (Doc. 8.) Petitioner agrees with the Findings and Recommendations that he should have raised his claim in a § 1983 action. (*Id.* at 1.) However, Petitioner requests the Court convert this matter to a Section 1983 civil rights action and "permit Petitioner to file an Amended Civil Rights Complaint under 42 U.S.C. § 1983 which is attached to these objections." (*Id.* at 2.)

The Court notes Petitioner did not, in fact, attach a proposed complaint to the objections. However, as the magistrate judge observed, this action was not "amenable to conversion on its face" by the Court. (*See* Doc. 7 at 1-2, citing *Nettles v. Grounds*, 830 F.3d 922, 936 (9th Cir.

2016), *Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009).) Furthermore, the exhaustion requirements for a civil rights claim differ, and the action would be subject to the three-strike rule of the Prison Litigation Reform Act. (*Id.* at 2.) Accordingly, the Court declines to simply convert this action to one under Section 1983, though Plaintiff may choose to initiate a civil action.

According to 28 U.S.C. § 636(b)(1)(C), the Court conducted a *de novo* review of the case. Having carefully reviewed the entire file—including Petitioner’s objections—the Court holds the Findings and Recommendations to be supported by the record and proper analysis. Thus, the

Court **ORDERS**:

1. The Findings and Recommendations issued on July 26, 2022 (Doc. 7) are **ADOPTED**.
2. The Clerk of Court is **DIRECTED** to send Petitioner a prisoner civil rights complaint form.
3. The petition for writ of habeas corpus is **DISMISSED** without prejudice to refile the claim in a civil action brought pursuant to 42 U.S.C. § 1983.

IT IS SO ORDERED.

Dated: **August 22, 2022**


UNITED STATES DISTRICT JUDGE